

2011 DRAFTING REQUEST

Bill

Received: **10/07/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Jim Steineke (608) 266-2418**

By/Representing: **Katherine**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - zoning
Real Estate - plats**

Addl. Drafters: **pkahler**

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Rep.Steineke@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Limit the authority of a political subdivision to impose a development moratorium

Instructions:

See attached. Create an Assembly companion

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 10/07/2011	mduchek 10/07/2011		_____			S&L
/P1			phenry 10/10/2011	_____	lparisi 10/10/2011		S&L
/1	mshovers 11/11/2011 mshovers	mduchek 11/16/2011 mduchek	rschluet 11/16/2011	_____ _____	ggodwin 11/16/2011	ggodwin 11/16/2011	S&L

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	01/12/2012	01/12/2012		_____			
/2			jmurphy 01/12/2012	_____ _____	sbasford 01/17/2012	sbasford 01/17/2012	S&L
/3	mshovers 01/19/2012	mduchek 01/20/2012	phenry 01/20/2012	_____ _____	sbasford 01/20/2012	sbasford 01/20/2012	

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/1	mshovers 11/11/2011 mshovers	mduchek 11/16/2011 mduchek	rschluet 11/16/2011		ggodwin 11/16/2011	ggodwin 11/16/2011	S&L

MS
11/20/11

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	01/12/2012	01/12/2012		_____			
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/2

jmurphy	_____
01/12/2012	_____

sbasford
01/17/2012

sbasford
01/17/2012

13 MES 1/19/12

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12

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/P1			phenry 10/10/2011	JP 11-16-11	lparisi 10/10/2011	JACKET for (A)	

FE Sent For:

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Topic:

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Instructions:

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to LRB - 2389 / P1

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/? mshovers

1/P1 MES 10/7/11 10/7/11 [Signature] ph/jr

FE Sent For:

<END>

From: Bates, Katherine
Sent: Friday, September 30, 2011 3:51 PM
To: Shovers, Marc
Subject: FW: Bills to be drafted

Attachments: 11-2389P1.pdf; [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Sincerely,
Katherine

From: jim@jimsteineke.com [mailto:jim@jimsteineke.com]
Sent: Friday, September 30, 2011 3:39 PM
To: Bates, Katherine
Subject: Fw: Bills to be drafted

Sent from my Verizon Wireless BlackBerry



State of Wisconsin
2011 - 2012 LEGISLATURE

3145/P1



LRB-2389/P1

MES&PJK:med&wlj:rs

stays (RM NR)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

GOON

gen

- 1 **AN ACT to create** 66.1002 of the statutes; **relating to:** limiting the authority of
2 a city, village, or town to enact a development moratorium ordinance.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 **SECTION 1.** 66.1002 of the statutes is created to read:
4 **66.1002 Development moratoria.** (1) **DEFINITIONS.** In this section:
5 (a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).
6 (b) "Development moratorium" means a moratorium on land development, or
7 on any subdivision or other division of land by plat or certified survey map that is
8 authorized under ch. 236.



(c) "Land development" has the meaning given in s. 66.0617 (1) (d).

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

* ****NOTE: *The instructions refer to a "public health professional licensed by WI";* does this paragraph meet your intent? Are there any other health professionals you'd like to include, such as osteopaths? See s. 49.43 (9), stats. Would you like a broader definition of "physician?" See, for example, s. 157.06 (2) (o), stats.

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance under this section if the municipality has enacted a comprehensive plan, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality is in the process of preparing its comprehensive plan.

(b) The municipality is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality.

* ****NOTE: I believe sub. (2) is drafted consistently with *the* instructions, but it seems to me that pars. (a) and (b) should be in the (intro.) to sub. (2); it's sort of confusing to have them as two of the four requirements. It also seems like pars. (c) and (d) are the "events" or conditions that could lead a municipality to decide to enact a moratorium, not pars. (a) or (b). Please let me know if you think any changes are needed to sub. (2). *in the companion bill*

(c) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period during which the moratorium would be in

1 effect, except that the governing body may not adopt such a resolution unless it
2 obtains a written report from a registered engineer stating that in his or her opinion
3 the possible shortage or overburdening of public facilities justifies the need for a
4 moratorium.

5 (d) The municipality's governing body adopts a resolution stating that a
6 moratorium is needed to address a significant threat to the public health or safety
7 that is presented by a proposed or anticipated land development, except that the
8 governing body may not adopt such a resolution unless it obtains a written report
9 from a registered engineer or public health professional stating that in his or her
10 opinion the proposed or anticipated land development presents such a significant
11 threat to the public health or safety that the need for a moratorium is justified.

12 (3) ORDINANCE REQUIREMENTS. (a) An ordinance enacted under this section
13 shall contain at least all of the following elements:

14 1. A statement describing the problem giving rise to the need for the
15 moratorium.

16 2. A statement of the specific action that the municipality intends to take to
17 alleviate the need for the moratorium.

18 3. Subject to par. (b), the length of time during which the moratorium is to be
19 in effect.

20 4. A statement describing how and why the governing body decided on the
21 length of time described in subd. 3.

22 5. A description of the area in which the ordinance applies.

23 6. An exemption for any land development that would have no impact, or slight
24 impact, on the problem giving rise to the need for the moratorium.

1 (b) 1. A development moratorium ordinance may be in effect only for a length
2 of time that is long enough for a municipality to address the problem giving rise to
3 the need for the moratorium but, except as provided in subd. 2., the ordinance may
4 not remain in effect for more than 12 months.

5 2. A municipality may amend the ordinance to extend the moratorium for not
6 more than 6 months if the municipality's governing body determines that such an
7 extension is necessary to address the problem giving rise to the need for the
8 moratorium.

9 (c) A municipality may not enact a development moratorium ordinance unless
10 it holds at least one public hearing at which the proposed ordinance is discussed. The
11 public hearing must be preceded by a class 2 notice under ch. 985, the first notice to
12 be at least 30 days before the hearing. The municipality may also provide notice of
13 the hearing by any other appropriate means. The class 2 notice shall contain at least
14 all of the following:

****NOTE: Is the "30 days before the hearing" requirement consistent with your
intent? It seems like most instances in the statutes that have notice requirements tie
them to a time when the notice must be issued.

15 1. The time, date, and place of the hearing.

16 2. A summary of the proposed development moratorium ordinance, including
17 the location where the ordinance would apply, the length of time the ordinance would
18 be in effect, and a statement describing the problem giving rise to the need for the
19 moratorium.

20 3. The name and contact information of a municipal official who may be
21 contacted to obtain additional information about the proposed ordinance.

22 4. Information relating to how, where, and when a copy of the proposed
23 ordinance may be inspected or obtained before the hearing.

1 (4) APPLICATION OF ORDINANCES, EXCEPTIONS. (a) If any person has informally
2 submitted a plan for land development, or if other circumstances exist that put the
3 municipality on notice of a person's intent to develop a specific site, the municipality
4 shall give actual notice of a proposed development moratorium ordinance to the
5 person who has informally submitted the plan or whose intent is known to the
6 municipality.

* ****NOTE: This paragraph is based on ~~your~~ ^{the} instructions ^{in the companion draft} (pre-drafted s. 236.xx (6)), but the instructions don't indicate of what the person is to receive actual notice. Is "actual notice of a proposed ordinance" consistent with your intent? Would you like more specific information to be conveyed? Also, it's unclear what legal standard would apply to the requirement that a municipality provide actual notice to a person whose "intent is known to the municipality." How would a person's intent be known, and by whom?

7 (b) A development moratorium ordinance enacted under this section does not
8 apply to any subdivision or other division of land by plat or certified survey map that
9 is authorized under ch. 236, or to any land development plan, if a municipality's
10 zoning or land development ordinances require the submission of any of those items
11 to the municipality.

* ****NOTE: This is based on ~~your~~ ^{the} instructions ^{in the companion bill} (pre-drafted s. 236.xx (7) (a)). I'm not sure what was intended and what a "concept plan" is. Also, the statutes require the submission of plats (see s. 236.10, stats.) and certified survey maps (see s. 236.34 (1) (intro.), stats.), so I'm not sure what the intent or effect is of the paragraph.

12 (c) A development moratorium ordinance enacted under this section first
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15 submitted to the municipality on the effective date of the ordinance, unless the
16 municipality and a developer agree to apply the ordinance retroactively.

* ****NOTE: This is based on ~~your~~ ^{the} instructions (pre-drafted s. 236.xx (7) (b)). It seems like what you want is an initial applicability provision, but I'm not sure to what "the standards for approval and development" refer. Also, the concern in the instructions seems to be addressed by current law in s. 236.13 (1) (b), stats.

Shovers, Marc

From: Steineke, Jim
Sent: Thursday, November 10, 2011 11:54 AM
To: Shovers, Marc
Subject: RE: Draft review: LRB 11-3145/P1 Topic: Limit the authority of a political subdivision to impose a development moratorium

Yes, please.

Rep. Jim Steineke
304 North, State Capitol
Madison, WI 53708
(608) 266-2418
(888) 534-0005 Toll Free

From: Shovers, Marc
Sent: Thursday, October 13, 2011 2:00 PM
To: Steineke, Jim
Subject: FW: Draft review: LRB 11-3145/P1 Topic: Limit the authority of a political subdivision to impose a development moratorium

Hello Rep. Steineke:

Would you like to have this bill turned into a /1 and then jacketed for the Assembly? Thanks.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Rep.Steineke
Sent: Thursday, October 13, 2011 11:42 AM
To: LRB.Legal
Subject: RE: Draft review: LRB 11-3145/P1 Topic: Limit the authority of a political subdivision to impose a development moratorium

Looks good.

Rep. Jim Steineke
304 North, State Capitol

11/10/2011

Madison, WI 53708
(608) 266-2418
(888) 534-0005 Toll Free

From: LRB.Legal

Sent: Monday, October 10, 2011 12:46 PM

To: Rep.Steineke

Subject: Draft review: LRB 11-3145/P1 Topic: Limit the authority of a political subdivision to impose a development moratorium

Following is the PDF version of draft LRB 11-3145/P1.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3145/P1

MES&PJK:med&wj:rs

Stays

(fmr)

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D-NOTE

regen

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17 (END)

P-NOTE

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3145/lins
MES&PJK:med&wlj:rs

INS ANL

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Also under current law, a city or village, or certain towns that exercise village powers, may create a city, village, or town plan commission to engage in zoning and land use planning. If a city, village, or town creates such a commission, the commission is required to adopt a master plan for the physical development of the city, village, or town, including in some instances, in the case of a city or village, unincorporated areas outside of the city or village that are related to the city's or village's development.

Under the current law commonly known as the "Smart Growth" statute, if a city, village, town, county, or regional planning commission ~~local governmental unit~~ creates a development plan or master plan (comprehensive plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; land use; and intergovernmental cooperation.

Subject to a number of limitations, and conditions, this bill authorizes a (municipality) ~~city, village, or town~~ to enact a development moratorium ordinance if the municipality has enacted, is in the process of enacting or amending, or is exempt from having to enact, a comprehensive plan. The municipality may enact a development moratorium ordinance (moratorium) only if its governing body adopts a resolution stating either that a moratorium is needed to prevent a shortage in or the overburdening of its public facilities or that a moratorium is needed to address a significant threat to the public health or safety. In either case, the municipality must obtain a written report from a professional engineer stating that the possible effect on public facilities, or the possible threat to public health or safety, justifies the need for a moratorium. In the case of a possible health or safety threat, the report may also be from a physician or registered nurse.

The moratorium must contain a number of elements, including a statement describing the problem giving rise to the need for the moratorium, the actions the municipality intends to take to address the problem, and the length of time the moratorium will apply. The moratorium may remain in effect only until the municipality addresses the problem giving rise to the need for the moratorium, or for 12 months, whichever occurs first. The bill also authorizes the municipality to extend the moratorium for another 6 months if the problem is not addressed. In addition, a municipality may not enact a moratorium unless it first holds a public hearing at which the proposed ordinance is discussed.

57

The bill provides that if any person has informally submitted a development plan to the municipality, or if the municipality is on notice of a person's intent to develop a specific site, the municipality must provide the person with actual notice of a proposed moratorium. Also under the bill, a moratorium does not apply to any subdivision or other division of land by plat or certified survey map, or to any other land development plan, if a municipality's zoning or land development ordinances require the submission of any of those items to the municipality. Under current law, however, plats and certified survey maps must be submitted to a municipality.

INS 5-17

SECTION 1. Initial applicability.

(1) This act first applies to any land development plan that is submitted to a municipality on the effective date of this subsection, unless the municipality and a developer agree to apply the municipality's development moratorium ordinance retroactively.

INS D-Note

Representative Steineke:

In this version of the bill I added the substance of created s. 66.1002 (2) (a) and (b) from the /P1 version of the draft to the intro. of sub. (2); the bill just didn't seem to work with those ^{two} items not in the intro. Because the intro. already is predicated on a municipality having enacted a comprehensive plan, I think created sub. (2) (a) and (b) from /P1 had to be added to the intro. Is this OK?

I also created an initial applicability provision that is based on sub. (4) (c) from the /P1 version of the bill. The rest of the bill is similar to the /P1 version, although I still have some of the concerns that I discussed in the ****NOTES in the /P1 version, especially with regard to sub. (4) (b).

It seems odd to condition a moratorium taking effect based on a municipality's zoning or land development ordinance that "requires" the submission of a plat or certified survey map to the municipality because state law already requires the submission of those items. Therefore, I'm not sure what the intent or legal effect of

that paragraph is. Perhaps sub. (4) (b) should say something similar to the following, which would have a very broad effect: "A development moratorium ordinance enacted under this section does not apply . . . to any land development plan if a landowner must submit to the municipality a plat or certified survey map for approval by the municipality." Please let me know if you have any additional questions about the bill.

A handwritten signature in black ink, appearing to be 'M3A' or similar, located below the main text.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3145/1dn
MES:med:rs

November 16, 2011

Representative Steineke:

In this version of the bill I added the substance of created s. 66.1002 (2) (a) and (b) from the /P1 version of the draft to the intro. of sub. (2); the bill just didn't seem to work with those two items not in the intro. Because the intro. already is predicated on a municipality having enacted a comprehensive plan, I think created sub. (2) (a) and (b) from /P1 had to be added to the intro. Is this OK?

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Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Shovers, Marc

From: Steineke, Jim
Sent: Tuesday, January 10, 2012 10:59 AM
To: Shovers, Marc
Subject: LRB 11-3145/1

Attachments: Comments%20on%20Moratorium%20bill3[1].doc

Marc – Can you make some changes based on the attached memo? I need this as soon as possible please. Can you give me an idea when this could be redrafted?



Comments%20on
?0Moratorium%20l

Rep. Jim Steineke
304 North, State Capitol
Madison, WI 53708
(608) 266-2418
(888) 534-0005 Toll Free

Comments on Moratorium bill (LRB 3145/1)

Comment #1: This moratorium enabling act should apply to a moratorium on any form of development approval, not just subdivision plats. Accordingly, the definition of "development moratorium" should be expanded to include "rezonings, building permits, conditional use permits."

Suggested change: Page 3, lines 1-2 – after "land development" add "rezonings, building permits, conditional use permits"

Comment #2: Any moratorium on development should be required to meet the requirements under this bill. As drafted, the bill creates some uncertainty as to whether a moratorium enacted under a different section in the statutes would not be required to satisfy these requirements.

Suggested changes -- Page 3, line 12 – after "may," add the word "not"; Page 3, line 13 – delete "under this section."

Comment #3 -- The allowable reasons for enacting a moratorium should be drafted differently. The requirements related to comprehensive planning are confusing. Rather than requiring communities to have a comprehensive plan in place or to be in the process of amending an existing comprehensive plan and then requiring communities to establish a shortage/overburdening of public facilities or a significant threat to public health and safety, each of these items should be a separate and allowable reason for enacting a moratorium.

Suggested changes -- Page 3 lines 11 – 17 should be redrafted in the following manner to reflect the suggested changes under comments #2 and #3 –

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may not enact a development moratorium ordinance unless at least one of the following applies:

(a) the municipality is in the process of preparing its comprehensive plan, as defined in s. 66.1001;

(b) the municipality has enacted a comprehensive plan and is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality;

Page 3, line 18 – change "(a)" to "(c)"

Page 4, line 1 – change "(b)" to "(d)"

Comment #4 – To minimize municipal costs related to public notice, we recommend that the public notice be changed to a class 1 notice given at least 30 days before the hearing.

Suggested changes – Page 5, lines 7 and 9 – change “class 2 notice” to “class 1 notice”

Comment #5 – This section is intended to grandfather any existing development proposal that was submitting to the municipality prior to the time the moratorium goes into effect. However, this section is confusing given the manner in which it was drafted.

Suggested changes -- Page 5 – Delete line 20 (starting with “If any person . . .”) through line 25, also page 6 – delete line 1 through line 5

Replace the deleted lines above with “A development moratorium enacted under this section does not apply to any rezoning, building permit, conditional use permit, subdivision or other division of land by plat or certified survey that is authorized under ch. 236, or to any land development plan, that is first submitted to the municipality before the moratorium ordinance is enacted.”

Miscellaneous

Page 3, line 21 -- replace the second “during” with “in”



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3145/2

MES&PJK:med&wlj:rs

stap (f m n r)

2011 BILL

WANTED:
Today

D-NOTE

regis

- 1 AN ACT *to create* 66.1002 of the statutes; **relating to:** limiting the authority of
2 a city, village, or town to enact a development moratorium ordinance.

Analysis by the Legislative Reference Bureau

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Also under current law, a city or village, or certain towns that exercise village powers, may create a city, village, or town plan commission to engage in zoning and land use planning. If a city, village, or town creates such a commission, the commission is required to adopt a master plan for the physical development of the city, village, or town, including in some instances, in the case of a city or village, unincorporated areas outside of the city or village that are related to the city's or village's development.

Under the current law commonly known as the "Smart Growth" statute, if a city, village, town, county, or regional planning commission creates a development plan or master plan (comprehensive plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; land use; and intergovernmental cooperation.

BILL

Subject to a number of limitations and conditions, this bill authorizes a city, village, or town (municipality) to enact a development moratorium ordinance if the municipality has enacted, is in the process of enacting or amending, or is exempt from having to enact, a comprehensive plan. The municipality may enact a development moratorium ordinance (moratorium) only if its governing body adopts a resolution stating either that a moratorium is needed to prevent a shortage in or the overburdening of its public facilities or that a moratorium is needed to address a significant threat to the public health or safety. In either case, the municipality must obtain a written report from a professional engineer stating that the possible effect on public facilities, or the possible threat to public health or safety, justifies the need for a moratorium. In the case of a possible health or safety threat, the report may also be from a physician or registered nurse.

The moratorium must contain a number of elements, including a statement describing the problem giving rise to the need for the moratorium, the actions the municipality intends to take to address the problem, and the length of time the moratorium will apply. The moratorium may remain in effect only until the municipality addresses the problem giving rise to the need for the moratorium, or for 12 months, whichever occurs first. The bill also authorizes the municipality to extend the moratorium for another six months if the problem is not addressed. In addition, a municipality may not enact a moratorium unless it first holds a public hearing at which the proposed ordinance is discussed.

~~The bill provides that if any person has informally submitted a development plan to the municipality, or if the municipality is on notice of a person's intent to develop a specific site, the municipality must provide the person with actual notice of a proposed moratorium. Also under the bill, a moratorium does not apply to any subdivision or other division of land by plat or certified survey map, or to any other land development plan, if a municipality's zoning or land development ordinances require the submission of any of those items to the municipality. Under current law, however, plats and certified survey maps must be submitted to a municipality.~~

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.1002 of the statutes is created to read:

66.1002 Development moratoria. (1) DEFINITIONS. In this section:

(a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

The bill first applies to ^a land development plan that is submitted to a municipality on the effective date of the bill, although the municipality and the developer could agree to apply the moratorium retroactively.

BILL

rezoning, issuing building or conditional use permits,

(1) (b) "Development moratorium" means a moratorium on land development, or on any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

(c) "Land development" has the meaning given in s. 66.0617 (1) (d).

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance ~~under this section~~ if the municipality has enacted a comprehensive plan, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period ~~during~~ ⁱⁿ which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

BILL**SECTION 1**

(b) The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated land development, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health professional stating that in his or her opinion the proposed or anticipated land development presents such a significant threat to the public health or safety that the need for a moratorium is justified.

(3) ORDINANCE REQUIREMENTS. (a) An ordinance enacted under this section shall contain at least all of the following elements:

1. A statement describing the problem giving rise to the need for the moratorium.

2. A statement of the specific action that the municipality intends to take to alleviate the need for the moratorium.

3. Subject to par. (b), the length of time during which the moratorium is to be in effect.

4. A statement describing how and why the governing body decided on the length of time described in subd. 3.

5. A description of the area in which the ordinance applies.

6. An exemption for any land development that would have no impact, or slight impact, on the problem giving rise to the need for the moratorium.

(b) 1. A development moratorium ordinance may be in effect only for a length of time that is long enough for a municipality to address the problem giving rise to the need for the moratorium but, except as provided in subd. 2., the ordinance may not remain in effect for more than 12 months.

BILL

2. A municipality may amend the ordinance to extend the moratorium for not more than 6 months if the municipality's governing body determines that such an extension is necessary to address the problem giving rise to the need for the moratorium.

(c) A municipality may not enact a development moratorium ordinance unless it holds at least one public hearing at which the proposed ordinance is discussed. The public hearing must be preceded by a class ²/_{notice} under ch. 985, the ~~notice~~ notice to be at least 30 days before the hearing. The municipality may also provide notice of the hearing by any other appropriate means. The class ²/_{notice} shall contain at least all of the following:

1. The time, date, and place of the hearing.
2. A summary of the proposed development moratorium ordinance, including the location where the ordinance would apply, the length of time the ordinance would be in effect, and a statement describing the problem giving rise to the need for the moratorium.
3. The name and contact information of a municipal official who may be contacted to obtain additional information about the proposed ordinance.
4. Information relating to how, where, and when a copy of the proposed ordinance may be inspected or obtained before the hearing.

~~(4) APPLICATION OF ORDINANCES, EXCEPTIONS. (a) If any person has informally submitted a plan for land development, or if other circumstances exist that put the municipality on notice of a person's intent to develop a specific site, the municipality shall give actual notice of a proposed development moratorium ordinance to the person who has informally submitted the plan or whose intent is known to the municipality.~~

1 the need for the moratorium but, except as provided in subd. 2., the ordinance may
2 not remain in effect for more than 12 months.

3 2. A municipality may amend the ordinance to extend the moratorium for not
4 more than 6 months if the municipality's governing body determines that such an
5 extension is necessary to address the problem giving rise to the need for the
6 moratorium.

7 (c) A municipality may not enact a development moratorium ordinance unless
8 it holds at least one public hearing at which the proposed ordinance is discussed. The
9 public hearing must be preceded by a class 2 notice under ch. 985, the first notice to
10 be at least 30 days before the hearing. The municipality may also provide notice of
11 the hearing by any other appropriate means. The class 2 notice shall contain at least
12 all of the following:

13 1. The time, date, and place of the hearing.

14 2. A summary of the proposed development moratorium ordinance, including
15 the location where the ordinance would apply, the length of time the ordinance would
16 be in effect, and a statement describing the problem giving rise to the need for the
17 moratorium.

18 3. The name and contact information of a municipal official who may be
19 contacted to obtain additional information about the proposed ordinance.

20 4. Information relating to how, where, and when a copy of the proposed
21 ordinance may be inspected or obtained before the hearing.

22 (4) APPLICABILITY. A development moratorium ordinance enacted under this
23 section applies to any of the following that is submitted to the municipality on or after
24 the effective date of the ordinance:

25 (a) A request for rezoning.

- 1 (b) An application for a building permit or a conditional use permit.
- 2 (c) A plat or certified survey map.
- 3 (d) A land development plan.

4

(END)



BILL

1 (b) A development moratorium ordinance enacted under this section does not
2 apply to any subdivision or other division of land by plat or certified survey map that
3 is authorized under ch. 236, or to any land development plan, if a municipality's
4 zoning or land development ordinances require the submission of any of those items
5 to the municipality.

SECTION 2. Initial applicability.

7 (1) This act first applies to any land development plan that is submitted to a
8 municipality on the effective date of this subsection, unless the municipality and a
9 developer agree to apply the municipality's development moratorium ordinance
10 retroactively.

(END)

D-NOTE

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3145/1dn
MES&PJK:med&wfrs

Date

Representative Steineke:

This version of the draft incorporates into the bill most of the items from the instructions you sent me. Under created sub. (2), however, I did not remove from the intro. the material relating to a comprehensive plan and move it to paragraphs (a) and (b) as shown in the email you sent.

I believe that the bill still reflects your substantive intent, but is more logical and workable as drafted. Pam Kahler and I have looked at this issue and it seems to us that the bill just didn't really work if those two items relating to the comprehensive plan are not in the intro. Because the intro. already is predicated on a municipality having enacted a comprehensive plan, it seems much less confusing to put those elements in the intro. instead of being one of 4 possible conditions that could lead to the enactment of a moratorium.

It also seems that the current pars. (a) and (b) are the "events" or conditions that could lead a municipality to decide to enact a moratorium, not the elements related to the comprehensive plan. Of course if you really would like the comprehensive planning items to be removed from the intro. and added as pars. (a) and (b), we can redraft the bill, but it is my opinion that the bill, as drafted, is a much more effective way to achieve what I understand to be your intent.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3145/2dn
MES:med:jm

January 12, 2012

Representative Steineke:

This version of the draft incorporates into the bill most of the items from the instructions you sent me. Under created sub. (2), however, I did not remove from the intro. the material relating to a comprehensive plan and move it to paragraphs (a) and (b) as shown in the email you sent.

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Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Shovers, Marc

From: Steineke, Jim
Sent: Thursday, January 19, 2012 9:48 AM
To: Kovach, Robert; Shovers, Marc; Kahler, Pam
Subject: RE: Moratorium Bill Draft

Yes, please make that change to my draft as well.

Rep. Jim Steineke
304 North, State Capitol
Madison, WI 53708
(608) 266-2418
(888) 534-0005 Toll Free

From: Kovach, Robert
Sent: Thursday, January 19, 2012 9:21 AM
To: Shovers, Marc; Kahler, Pam
Cc: Steineke, Jim
Subject: Moratorium Bill Draft

Hi Marc,

Here is the moratorium bill draft that you finished for Rep Steineke. We are fine with this draft, except for one small change -- on page 2, line 5 -- please strike the word "building." Please use this language from his version and the sentence above to make our version match: LRB-2389.

It's my assumption that Rep. Steineke will want the same change on his draft, but I'll let him confirm that.

Apparently, if municipalities are given the authority to enact moratoria on building permits, this could deny affected property owners with all reasonable use of their property, which could result in a "taking."

Please let me know if you have questions. Thank you.

Rob Kovach
Chief of Staff
Office of Senator Frank Lasee
608-266-3512



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3145/2

MES&PJK:med&wlj:jm

RMR

2011 BILL

Wanted:
SOON
Ed, LPS:
only change: P.2, Q.5

gln

- 1 AN ACT *to create* 66.1002 of the statutes; **relating to:** limiting the authority of
- 2 a city, village, or town to enact a development moratorium ordinance.

Analysis by the Legislative Reference Bureau

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Also under current law, a city or village, or certain towns that exercise village powers, may create a city, village, or town plan commission to engage in zoning and land use planning. If a city, village, or town creates such a commission, the commission is required to adopt a master plan for the physical development of the city, village, or town, including in some instances, in the case of a city or village, unincorporated areas outside of the city or village that are related to the city's or village's development.

Under the current law commonly known as the "Smart Growth" statute, if a city, village, town, county, or regional planning commission creates a development plan or master plan (comprehensive plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; land use; and intergovernmental cooperation.

BILL

Subject to a number of limitations and conditions, this bill authorizes a city, village, or town (municipality) to enact a development moratorium ordinance if the municipality has enacted, is in the process of enacting or amending, or is exempt from having to enact, a comprehensive plan. The municipality may enact a development moratorium ordinance (moratorium) only if its governing body adopts a resolution stating either that a moratorium is needed to prevent a shortage in or the overburdening of its public facilities or that a moratorium is needed to address a significant threat to the public health or safety. In either case, the municipality must obtain a written report from a professional engineer stating that the possible effect on public facilities, or the possible threat to public health or safety, justifies the need for a moratorium. In the case of a possible health or safety threat, the report may also be from a physician or registered nurse.

The moratorium must contain a number of elements, including a statement describing the problem giving rise to the need for the moratorium, the actions the municipality intends to take to address the problem, and the length of time the moratorium will apply. The moratorium may remain in effect only until the municipality addresses the problem giving rise to the need for the moratorium, or for 12 months, whichever occurs first. The bill also authorizes the municipality to extend the moratorium for another six months if the problem is not addressed. In addition, a municipality may not enact a moratorium unless it first holds a public hearing at which the proposed ordinance is discussed.

The bill first applies to a land development plan that is submitted to a municipality on the effective date of the bill, although the municipality and the developer could agree to apply the moratorium retroactively.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.1002 of the statutes is created to read:

2 **66.1002 Development moratoria.** (1) **DEFINITIONS.** In this section:

3 (a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

4 (b) "Development moratorium" means a moratorium on land development,
5 rezoning, issuing ~~conditional use permits~~ conditional use permits, or on any subdivision or other
6 division of land by plat or certified survey map that is authorized under ch. 236.

7 (c) "Land development" has the meaning given in s. 66.0617 (1) (d).

8 (d) "Municipality" means any city, village, or town.

BILL

1 (e) "Public health professional" means any of the following:

2 1. A physician, as defined under s. 48.375 (2) (g).

3 2. A registered professional nurse, as defined under s. 49.498 (1) (L).

4 (f) "Registered engineer" means an individual who satisfies the registration
5 requirements for a professional engineer as specified in s. 443.04

6 (2) MORATORIUM ALLOWED. Subject to the limitations and requirements
7 specified in this section, a municipality may enact a development moratorium
8 ordinance if the municipality has enacted a comprehensive plan, is in the process of
9 preparing its comprehensive plan, is in the process of preparing a significant
10 amendment to its comprehensive plan in response to a substantial change in
11 conditions in the municipality, or is exempt from the requirement as described in s.
12 66.1001 (3m), and if at least one of the following applies:

13 (a) The municipality's governing body adopts a resolution stating that a
14 moratorium is needed to prevent a shortage in, or the overburdening of, public
15 facilities located in the municipality and that such a shortage or overburdening
16 would otherwise occur during the period in which the moratorium would be in effect,
17 except that the governing body may not adopt such a resolution unless it obtains a
18 written report from a registered engineer stating that in his or her opinion the
19 possible shortage or overburdening of public facilities justifies the need for a
20 moratorium.

21 (b) The municipality's governing body adopts a resolution stating that a
22 moratorium is needed to address a significant threat to the public health or safety
23 that is presented by a proposed or anticipated land development, except that the
24 governing body may not adopt such a resolution unless it obtains a written report
25 from a registered engineer or public health professional stating that in his or her

BILL**SECTION 1**

1 opinion the proposed or anticipated land development presents such a significant
2 threat to the public health or safety that the need for a moratorium is justified.

3 **(3) ORDINANCE REQUIREMENTS.** (a) An ordinance enacted under this section
4 shall contain at least all of the following elements:

5 1. A statement describing the problem giving rise to the need for the
6 moratorium.

7 2. A statement of the specific action that the municipality intends to take to
8 alleviate the need for the moratorium.

9 3. Subject to par. (b), the length of time during which the moratorium is to be
10 in effect.

11 4. A statement describing how and why the governing body decided on the
12 length of time described in subd. 3.

13 5. A description of the area in which the ordinance applies.

14 6. An exemption for any land development that would have no impact, or slight
15 impact, on the problem giving rise to the need for the moratorium.

16 (b) 1. A development moratorium ordinance may be in effect only for a length
17 of time that is long enough for a municipality to address the problem giving rise to
18 the need for the moratorium but, except as provided in subd. 2., the ordinance may
19 not remain in effect for more than 12 months.

20 2. A municipality may amend the ordinance to extend the moratorium for not
21 more than 6 months if the municipality's governing body determines that such an
22 extension is necessary to address the problem giving rise to the need for the
23 moratorium.

24 (c) A municipality may not enact a development moratorium ordinance unless
25 it holds at least one public hearing at which the proposed ordinance is discussed. The

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1 public hearing must be preceded by a class 1 notice under ch. 985, the notice to be
2 at least 30 days before the hearing. The municipality may also provide notice of the
3 hearing by any other appropriate means. The class 1 notice shall contain at least all
4 of the following:

5 1. The time, date, and place of the hearing.

6 2. A summary of the proposed development moratorium ordinance, including
7 the location where the ordinance would apply, the length of time the ordinance would
8 be in effect, and a statement describing the problem giving rise to the need for the
9 moratorium.

10 3. The name and contact information of a municipal official who may be
11 contacted to obtain additional information about the proposed ordinance.

12 4. Information relating to how, where, and when a copy of the proposed
13 ordinance may be inspected or obtained before the hearing.

14 (4) **APPLICABILITY.** A development moratorium ordinance enacted under this
15 section applies to any of the following that is submitted to the municipality on or after
16 the effective date of the ordinance:

17 (a) A request for rezoning.

18 (b) An application for a building permit or a conditional use permit.

19 (c) A plat or certified survey map.

20 (d) A land development plan.

21 **SECTION 2. Initial applicability.**

22 (1) This act first applies to any land development plan that is submitted to a
23 municipality on the effective date of this subsection, unless the municipality and a

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SECTION 2

1 developer agree to apply the municipality's development moratorium ordinance
2 retroactively.

3 (END)